

Local Government Employee-Management Relations Board E-Newsletter

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On the Horizon

The next meeting of the Board will be held on Tuesday, April 7th through Thursday, April 9th, in Las Vegas. The agenda for this meeting will be issued on March 30th. At this meeting the Board will conduct a hearing for case A1-046116, David O'Leary v. Las Vegas Metropolitan Police Department. Captain O'Leary alleges he was threatened with a demotion and change in shift for management's belief that he was instrumental in allowing a private citizen to fly along in a helicopter so he could propose to his fiancé. O'Leary further contends he was coerced into an early retirement in order to keep his credentials. He alleges several violations, including interference and coercion of his rights, a unilateral change to the bargained-for discipline procedure and discrimination based on personal and political reasons.

Also in April the Board is scheduled to deliberate and decide on a case heard in January: A1-046108, LVCEA & Val Sharp v. City of Las Vegas. Sharp alleges that his discipline should be rescinded because he was acting in his union capacity during the events in question and not as an employee of the City of Las Vegas. Thus the City of Las Vegas had no authority to discipline him.

In April the Board is also scheduled to approve an election plan for a second discretionary runoff election between the Education Support Employees Association (ESEA) and Teamsters Local 14. ESEA currently represents the more than 11,000 support employees who work for the Clark County School District. Both the original election and a runoff election, held earlier this year, were inconclusive. The Board has since ordered a second discretionary runoff election and directed the Commissioner to present a plan for the election. The Board has further ordered that the winner of the upcoming election will be the union that receives a majority of the votes cast during the election.

Recent Decisions

*Please note that these summaries are provided for informational purposes only and are not intended to substitute for the opinions of the Board. These summaries should not be cited to or regarded as legal authority. The EMRB will provide copies of the decisions upon request. The Board issued several notable decisions this month:

Case No. 2015-002, RTC of Washoe County v. AFSCME. AFSCME represents three bargaining units, one of which is an administrative unit of 11 employees. 8 of these 11 employees filed a petition with their employer, requesting that the employer withdraw its recognition of AFSCME as their exclusive representative. So the RTC filed a petition with the EMRB requesting permission to withdraw its recognition. AFSCME did not file a response to this petition. Accordingly, the Board granted the RTC's request, noting that it appeared AFSCME no longer enjoyed majority support of the unit. The employees thus will become non-union at this time.

Inside This Issue

- 1 On the Horizon** - Learn about our upcoming meetings
- 1-2 Recent Decisions** - Read about significant decisions just issued by the Board
- 3 In the Queue** - See the cases that are waiting to be heard by the Board
- 3 Board Decisions and Orders Now on Nevada Law Library on CD** - Read how you can have searchable copies of past Board orders.

Recent Decisions (cont'd)

The following two cases were brought by union members against their respective unions, alleging that their union breached its duty of fair representation. As the recognized bargaining agent, a union owes a duty of fair representation to the employees in the bargaining unit it represents. Rosequist v. Int'l Ass'n of Firefighters Local 1908, 118 Nev. 444, 49 P.3d 651 (2002). A union breaches its duty of fair representation when it acts in a manner that is arbitrary, discriminatory or in bad faith towards the employees it represents. Weiner v. Beatty, 121 Nev. 243, 116 P.3d 829 (2005).

A union's actions are arbitrary only if the union's conduct can be fairly characterized as so far outside a "wide range of reasonableness that it is wholly 'irrational.'" Bybee & Gingell v. White Pine County School District, Item No. 724B (2011). A union's actions are discriminatory when they are intentional, severe, and unrelated to legitimate union objectives. Crom v. Las Vegas-Clark County Library District, Item No. 752E (2013). Furthermore, bad faith occurs when there is evidence of fraud, deceitful action or dishonest conduct. Id.

With this as the background, we now turn to the two cases:

Case No. A1-045847 through A1-045864, Deborah Boland et al v. SEIU, Local 1107 (Item No. 802). SEIU, Local 1107 represented various units at UMC and its Quick Care centers. One of these was a physicians' unit, which became recognized in 1999. SEIU subsequently negotiated a collective bargaining agreement, which expired in 2002. As it sought a successor agreement, problems developed. Testimony elicited at the hearing revealed that the physicians' group on several occasions disregarded the strategy developed by SEIU. Instead, the physicians' group met privately with Clark County Commissioners and also appeared on a political television show. They further advocated for protecting their own employees by eliminating positions in other bargaining units or nurses and ancillary staff. These comments upset not only the other employees, but also the staff at SEIU, which ultimately made the decision to withdraw as the physicians' bargaining agent. The physicians then filed a breach of the duty of fair representation over the withdrawal, the failure to negotiate a successor agreement, and for not continuing to represent them on outstanding grievances.

The Board held that SEIU had the right to withdraw and that its decision was not arbitrary, discriminatory or in bad faith given the circumstances as presented. SEIU's decision that it could no longer act on behalf of the physicians was not "so far outside a wide range of reasonableness to be irrational". Furthermore, by withdrawing, SEIU was under no legal obligation to continue bargaining for a successor agreement. However, the Board did find that SEIU breached its duty to process the grievances outstanding at the time of its withdrawal, especially after it stated in writing that it would do so for grievances filed before June 30, 2002. Using concepts related to attorneys withdrawing representation of a client, the Board held that "where an employee organization voluntarily withdraws as the bargaining agent, and is not replaced by a new bargaining agent, the withdrawing organization breaches the duty of fair representation when it abandons the existing grievances or does not otherwise take steps to eliminate any material adverse effects." Here, the Board noted that SEIU basically abandoned the outstanding grievances and accordingly ordered SEIU to take steps to ensure no material adverse effect by processing the grievances or relinquishing the grievances to the employees, if so requested by them.

Case No. A1-046111, Justin Simo v. Henderson Police Officers Association (Item No. 801). Justin Simo was a member of the SWAT team for the City of Henderson. On February 27, 2013, he was driving his SWAT vehicle home when the vehicle hit a median on I-15. Instead of pulling off to the side of the road to inspect the damage, Simo continued to drive the vehicle. A passerby noted sparks coming from one of the wheel rims. Simo made it to the gate of his community, where the vehicle caught fire, totally destroying the vehicle and some of its contents. At this time his employer also opened an investigation into a 2012 vehicle accident. The City of Henderson ultimately terminated Simo for untruthfulness over his 2012 accident, untruthfulness related to his 2013 accident, and for willfully damaging department property related to his 2013 accident. Simo requested his union file grievances for each accident. The HPOA's grievance committee met and reviewed the case files as presented by the department and decided to file a grievance over the 2012 accident but not the 2013 accident.

Simo filed a breach of the duty of fair representation against his union. The duty of fair representation requires that a union conduct some minimal investigation before deciding whether to file a grievance. Vos v. City of Las Vegas, Item No. 749 (2014). The Board found that HPOA had met this requirement by reviewing the employer's case file and thus its decision was not arbitrary. However, the Board did find that the HPOA was arbitrary by not filing a grievance over that portion of the 2013 accident that accused Simo of being untruthful. A union breaches its duty of fair representation if it ignores a meritorious grievance. Vaca v. Sipes, 386 U.S. 171 (1967). Here, there was testimony from a union official that he believed Simo had not lied about this accident. Moreover, when a police officer is accused of untruthfulness, he/she is labelled a "Brady cop", which essentially kills that person's career in law enforcement. Given both the statement supporting Simo, as well as the important significance of not challenging this label, the Board found that the HPOA was arbitrary in not pursuing that portion of the 2013 grievance related to Simo's honesty. The Board thereupon ordered the HPOA to process that portion of the 2013 grievance on Simo's behalf and to also post a notice at its union office for a period of 30 days.

In the Queue...

Once initial pleadings, including pre-hearing statements, have been filed with the EMRB and after any motions to dismiss or defer have been decided, then a case typically goes into a queue, waiting for the Board to decide whether to grant a hearing in the case or dismiss the complaint. Below is a description of the current queue:

On April 7-9 the Board will hear A1-046116, David O'Leary v. Las Vegas Metropolitan Police Department.

Then on May 5-6 the Board will meet in Elko and hear A1-046068, Elko County Employees Association v. Elko County.

The Board will hear two cases in June: A1-046123, Nye County Law Enforcement Association v. Nye County and A1-046113, Education Support Employees Association and Police Officers Association of the Clark County School District v. Clark County School District.

On July 14-16 the Board will hear A1-046130, SEIU, Local 1107 v. Clark County.

Finally, on August 11-13 the Board will hear A1-046133, SEIU, Local 1107 v. Southern Nevada Regional Housing Authority.

The following cases are waiting for the Board to deliberate and decide on the status of the case, including, but not limited to, dismissal of the case or the granting of a hearing on the complaint. Please note that the order listed below is not necessarily the order in which the cases will be heard:

In Las Vegas:

A1-046128, City of Las Vegas v. Las Vegas Peace Officers Association

A1-046138, Education Support Employees Association v. Clark County School District

Board Decisions and Orders Now on Nevada Law Library on CD

The Legislative Counsel Bureau, an arm of the State Legislature, sells a product called the Nevada Law Library on CD. This CD contains state laws, the state administrative code, Nevada Supreme Court decisions, court rules, etc. We learned about two weeks ago that for the first time ever the CD now contains EMRB decisions and orders.

Currently the CD contains all the Board's decisions and orders from number 400 to number 796. We are working on preparing all the orders from number 1 through 399 for inclusion on the next release of the CD, which hopefully will be issued later this year. We will also add the most recent orders to the next release of the CD (right now the EMRB is up to order 802).

The nice thing about the Nevada Law Library on CD is that all the documents are searchable. So a user can select to only review the EMRB decisions and orders and then enter a search term such as "personal reasons" and it will find all the decisions and orders that contain that phrase within the body of the document, thus giving users an easy way to find relevant cases.

If you do not already have this product, please visit www.leg.state.nv.us/Division/LCB for more information.

"About the EMRB"

The Employee-Management Relations Board (EMRB), a Division of the Department of Business and Industry, fosters the collective bargaining process between local governments and their employee organizations (i.e., unions), provides support in the process, and resolves disputes between local governments, employee organizations, and individual employees as they arise.